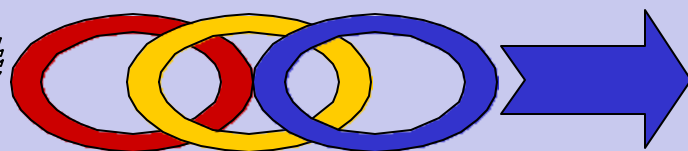


Court Connection



U.S. Bankruptcy Court
Western District of N.C.

E-Mail Address:
Newsletter@ncbankruptcy.org

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What's Inside?



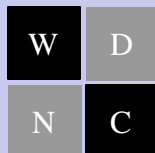
CM/ECF Update
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...and more!

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The Chambers "Skinny"

by George R. Hodges & J. Craig Whitley, Bankruptcy Judges

Basics of Noticing

With the volume of pleadings that must be noticed in a bankruptcy case, it is important for attorneys to follow the rules for noticing your document. Because the rules are not set in one place and because no two courts notice hearings exactly the same way, we thought a gentle reminder about the noticing procedures employed in the Western District might be helpful:

1. **Attorneys Send the Notices.** In this District, the moving attorney, not the Clerk performs the bulk of noticing. Apart from routine process notices (notices of first meetings, discharge orders, etc.), the moving attorney typically is responsible for the notice.

2. **No Protest Notices.** Many motions can be noticed on a "no protest" basis such that a hearing is held only if a written response is filed. The types of motions that may be noticed in this fashion are listed in LR 9013(e). We strongly encourage the use of these notices, as they avoid needless appearances on uncontested matters. However, some caveats apply:

(a) Some motions require a hearing and may not be noticed on a no protest basis, unless the judge orders it. Only the types of motions listed in LR 9013 can be "no protest" noticed, absent a court order.

(b) When notice has been shortened, we usually require a hearing on the motion. With a reduced reaction time, it is not reasonable to require the respondent to file a written response in advance of the hearing.

(c) Notice most of your motions for a regularly scheduled motion day for the appropriate division and chapter, giving the required number of days notice. If another date or place is needed, clear it in advance with your opponent and the Judge's secretary.

3. **How Much Notice?** Look it up in the book—FRBP / LR 2002, 7007, 9006, and 9013 contain most of the time periods:

(a) Give the statutory notice. You are not permitted to unilaterally shorten notice of your motion, even if you are electronically filing. If you set a hearing on less than the required notice without a prior order, expect to pay your opponent's attorneys fees for getting it continued.

(b) Most bankruptcy matters require 20 days notice before a hearing. By local rule, we have interpreted this to permit no protest notices with a 15 days response time and 20 days for the hearing. See LR 9013. However, there are exceptions. For example, many adversary motions specify other notice periods. Look up the required notice period for the particular motion you are filing.

Continued on Page 2....



NOTABLES:



When did I agree to E-Service?

-When you received your password.



Tips from Court Petition-Proofers:

-DON'T use all CAPS when typing debtor's info into the petition software.

-If you're not using auto upload: Remember to add Jr. or Sr. to the "Generation" field provided on the party information screen. (Do not enter a generation on the same line as the debtor's last name in CM/ECF.)

- If you're not using auto upload: Remember to add any aliases by clicking the 'Alias' button. (Do not enter aliases on the same line as the debtor name in either your petition software or CM/ECF.

BEST OPTION: Use auto-upload! It will save time and perfection is assured!



Credit Cards:

Regrettably, the court cannot accept a credit card transaction for less than \$5.00.

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The Chambers Skinny..... (Continued from Page 1)

(c) **Shortened Notice.** We often get calls from attorneys asking us to shorten notice and asking hopeful questions like, "Is three days notice sufficient?" Obviously, these ex parte requests are improper. Here is the right way to shorten notice:

* File your motion to shorten notice and in the motion indicate why you need the notice shortened. We are looking for emergencies, not matters of convenience. 'Cuz, the realtor wants to close on Friday' is not "cause" to shorten notice of a property sale. The fact that the house is going to be sold at foreclosure on Monday may be cause.

* We try very hard not to shorten notice of sales below 10 days. Less than 10 days is simply not enough reaction time for a respondent. If you need to act on less notice than this, be prepared to justify the motion as an ex parte request.

* It is appropriate to call the judge's secretary to ask for available dates, in the assumption that the shortened notice will be allowed.

* Self-inflicted wounds do not garner medals. The fact that your client did not tell you about the sale until a week before the closing is not cause to shorten notice.

* Be mindful of due process. The more you shorten notice, the more likely the order is to be set aside if there is an after-the-fact due process attack.

4. **Special Dates & Your Opponent.** We are all busy now and need to efficiently use our time. So, notice your routine motions for motion dates. Do not notice your trial or long, evidentiary motion for a motion day calendar. If you see that your motion is mushrooming into a big fight, seek to continue it to a special hearing date. Call your opponent, try to coordinate available dates, and then phone the Judge's office to get a special setting. Do not ask the Court for a special setting without first asking your opponents if that date works for them.

5. **Motions to Reconsider.** We do not automatically set hearings on motions seeking reconsideration of orders. You should not either. File it, serve it on your opponent, and deliver a copy to chambers. We will decide whether we want to have another hearing and let you know.

(a) An aside – lately, there have been a spate of reconsideration motions for relief from stay orders and dismissals. Typically, the Debtor did not have money at the hearing but now has some. Generally speaking, we do not consider this cause to reconsider under LR 9024. Consider cutting a deal with your opponent or refiling the case.

(b) If you do seek reconsideration, remember to follow the notice requirements of the order being reconsidered. If the case was dismissed, the dismissal order was served case wide. The reconsideration motion must be served case wide as well. Serving only the Trustee will not fly. Again, it is a question of due process.



Annual Bankruptcy CLE and Ski

The annual Bankruptcy CLE and Ski will be held in Park City, Utah January 30 - February 4, 2003. Six to nine CLE Credit Hours will be offered. Accommodations are being reserved at a condominium property called Snowflower. **Contact:** Libby Davis with Corporate Travel Management: (704) 561-0707 (libby@corptravelmgt.com) or Anna Gorman w/ Poyner & Spruill LLP.: (704) 342-5276 (agorman@poynerspruill.com).

Case Management/Electronic Case Files Update

by Karen Heavner, Systems Analyst

National Status: Nationwide there are 38 Bankruptcy Courts and 11 District Courts 'live' on CM/ECF systems. Additionally, there are 33 Bankruptcy Courts and 20 District Courts in some stage of the implementation process. Listed below are two web sites which provide current listings of the courts using CM/ECF systems.

<http://www.pacer.psc.uscourts.gov/announcements/general/ecfnews.html>

(PACER web site - lists all federal courts using CM/ECF systems)

http://www.uscourts.gov/cmecf/cmecf_about.html

(Federal Judiciary web page also includes a list of courts not yet 'live' but in some stage of implementation)



Court To Court Differences: Unlike PACER logins which are used to access court records nationwide, CM/ECF logins are specific to each court district, allow electronic filing of cases and documents and must be assigned by each court. A court may also require further training because filing procedures differ from district to district. Some other things to consider before filing in other court districts are listed below:

Judge/Trustee/341 Assignment: Not available in all districts

Case Upload: Not available in all districts

Filing Claims Electronically: Not accepted in all districts

CM vs. ECF: Few courts do not allow electronic filing and/or do not provide document images

Scheduling and Noticing Hearings: Some districts do not allow attorneys to schedule hearings;

Clerk's Office staff notices and schedules hearings

Tendering of Orders: E-mail, attachments to motions, over-the-counter and US Mail

Payment of Filing Fees: Credit card only in NC-W

Local Rules: Vary from district to district

Users Group: This group meets every three months at the Charles R. Jonas Federal Building in Charlotte. Members include staff from attorney and trustees offices, as well as the bankruptcy administrator office and bankruptcy court. Minutes are posted on the court's ECF web page at <https://www.ncwb.uscourts.gov/ecf/ecf.html>. The court will gladly arrange for users in the Asheville area to attend meetings via teleconference at the Asheville courthouse.

Local Recommendations for Debtor Attorneys (NC-Western):

✓ Please click the **Judge/Trustee Assignment** link daily (after filing new cases) regardless of the chapter of the filing. This will ensure cases are assigned the appropriate judge, trustee, and 341 meeting.

✓ Using **Case Upload** to file new cases will reduce your filing time from 10-15 minutes to 2-3 minutes. Petition preparation software that generates the files necessary to upload new cases is listed on the court's ECF web page at <http://www.ncwb.uscourts.gov/ecf/PetitionPrepSoftware.PDF>.



Asheville Bar Breakfast

The Annual Asheville Bar Breakfast meeting was held on October 22, 2002. Sara Davis and Robin Cherkas organized what proved to be a huge success. Many local attorneys and their staff enjoyed the opportunity to meet court staff and network with others while enjoying a great breakfast.

New Law Clerks?

Well, yes and no! We are fortunate to welcome Andi Ricks, law clerk to Judge Hodges for the upcoming year, and thrilled to re-welcome Laura Beyer, clerking for Judge Whitley this year.

Andi Ricks graduated from UNC Chapel Hill in December, 1992 with a major in speech communication and went on to graduate from Wake Forest University School of Law in 2002. She spent time working in the pharmaceutical sales industry prior to pursuing her legal career.

Laura Beyer is a 1993 graduate of Davidson College and a 1998 graduate of UNC Chapel Hill School of Law. After serving one year as law clerk to Judge Hodges, Laura spent three years with Smith, Helms, Mullis & Moore, LLP in Charlotte, NC. We are now fortunate to have her return to us, this year as Judge Whitley's law clerk, and thereafter as permanent law clerk to Judge Hodges.

